

DEAN S. KRISTY (CSB NO. 157646)
dkristy@fenwick.com
SUSAN S. MUCK (CSB NO. 126930)
smuck@fenwick.com
JENNIFER BRETAN (CSB NO. 233475)
jbretan@fenwick.com
JAMES J. VARELLAS III (CSB NO. 253633)
jvarellas@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, California 94104
Telephone: (415) 875-2300
Facsimile: (415) 281-1350

Attorneys for Defendants Diamond Foods, Inc.,
Michael J. Mendes and Steven M. Neil

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JORGE SALHUANA, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

DIAMOND FOODS, Inc., MICHAEL J.
MENDES, and STEVEN M. NEIL,

Defendants.

Case No. CV 11-05386 WHA

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

(Civil L.R. 3-12(b) and 7-11)

Judge: The Honorable William H. Alsup

Date Action Filed: November 7, 2011

Pursuant to Civil Local Rules 3-12(b) and 7-11 of the United States District Court for the Northern District of California, defendants Diamond Foods, Inc., Michael J. Mendes and Steven M. Neil hereby move the Court to consider whether this matter and five (5) subsequently filed securities class actions (the “Securities Actions”) and one (1) derivative action (the “Derivative Action”) filed in the Northern District of California are related actions. In order of filing date, the matters submitted for determination under Civil Local Rule 3-12(b) are as follows:

<u>Case Name</u>	<u>Case Number</u>	<u>Filing Date</u>
<i>Salhuana v. Diamond Foods, Inc. et al.</i>	CV 11-05386 WHA	11/7/2011
<i>Mitchem v. Diamond Foods, Inc. et al.</i>	CV 11-05399 RS	11/7/2011
<i>Woodward v. Diamond Foods, Inc. et al.</i>	CV 11-05409 LHK	11/8/2011
<i>Rall v. Diamond Foods, Inc. et al.</i>	CV 11-05457 PJH	11/9/2011
<i>Simon v. Diamond Foods, Inc. et al.</i>	CV 11-05479 PJH	11/10/2011
<i>MacFarland v. Diamond Foods, Inc. et al.</i>	CV 11-05615 EJD	11/21/2011
<i>Bd. of Trustees of City of Hialeah Emp. Ret. Sys. v. Mendes et al. (“Hialeah”)</i>	CV 11-05692 LB	11/28/2011

(together, the “*Securities and Derivative Actions*”).

Civil Local Rule 3-12(a) provides that an action is related to another when: “(1) [t]he actions concern substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” These criteria are met here. The plaintiff in each of the above Securities Actions is a purported shareholder of Diamond Foods, Inc. (“Diamond” or the “Company”) who brings suit under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §§78j(b) and 78t(a)) and Securities and Exchange Commission (“SEC”) Rule 10b-5 (17 C.F.R. §240.10b-5) promulgated thereunder, on behalf of a proposed class, against the Company and the same two individual defendants. Similarly, in *Hialeah*, an alleged shareholder purports to bring suit on behalf of the Company against the same individuals named in the Securities Actions, as well as against Diamond’s directors, and asserts claims under §14(a) of the Exchange Act, SEC Rule 14a-9 promulgated

1 thereunder, along with related claims for breach of fiduciary duties and unjust enrichment, among
2 other causes of action. Whether styled as a securities class action, or derivative suit, each
3 complaint focuses on the same transactions and events and contains substantially similar
4 allegations. Given that substantially similar parties, transactions and events are involved in each
5 of the Securities and Derivative Actions, there will be an unduly burdensome duplication of labor
6 and expense, and potentially inconsistent results, if the cases were to be conducted before
7 different Judges. Accordingly, relating these actions will serve the interests of judicial economy
8 and avoid the potential for conflicting results, consistent with Civil Local Rule 3-12 (a).

9 In furtherance of this motion, and in compliance with Civil Local Rule 7-11, defendants
10 obtained a stipulation from all counsel in the Securities and Derivative Actions, agreeing that
11 those matters should be deemed related to this matter, the first filed action. *See* Stipulation and
12 [Proposed] Order Relating Cases, filed herewith. For all the foregoing reasons, defendants
13 respectfully request that this Court enter an order relating the Securities and Derivative Actions.

14 Dated: December 9, 2011

FENWICK & WEST LLP

15 By: /s/ Jennifer C. Bretan
16 Jennifer C. Bretan

17 555 California Street, 12th Floor
18 San Francisco, California 94104
19 Telephone: (415) 875-2300
20 Facsimile: (415) 281-1350

21 Attorneys for Defendants Diamond Foods, Inc.,
22 Michael J. Mendes and Steven M. Neil
23
24
25
26
27
28